

1 EDMUND G. BROWN JR.
Attorney General of California
2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
3 LORETTA A. WEST
Deputy Attorney General
4 State Bar No. 149294
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2107
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2010-34

12 **MICHELLE L. BARCLAY**
13 **1237 Fulton Road**
14 **San Marcos, CA 92069**
Registered Nurse License No. 613717

ACCUSATION

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Heidi J. Goodman (Complainant) brings this Accusation solely in her official capacity
21 as the Assistant Executive Officer of the Board of Registered Nursing, Department of Consumer
22 Affairs.

23 2. On or about February 13, 2003, the Board of Registered Nursing issued Registered
24 Nurse License Number 613717 to Michelle L. Barclay (Respondent). The Registered Nurse
25 license was in full force and effect at all times relevant to the charges brought herein and will
26 expire on July 31, 2010, unless renewed.

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5. Section 2750 of the Business and Professions Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

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"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

1 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
2 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
3 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
4 himself or herself, any other person, or the public or to the extent that such use impairs his or her
5 ability to conduct with safety to the public the practice authorized by his or her license.

6 ". . . . "

7 8. Section 492 of the Code states:

8 "Notwithstanding any other provision of law, successful completion of any diversion
9 program under the Penal Code, or successful completion of an alcohol and drug problem
10 assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of
11 Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2
12 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that
13 division, from taking disciplinary action against a licensee or from denying a license for
14 professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a
15 record pertaining to an arrest.

16 "This section shall not be construed to apply to any drug diversion program operated by any
17 agency established under Division 2 (commencing with Section 500) of this code, or any
18 initiative act referred to in that division."

19 **COST RECOVERY**

20 9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
21 administrative law judge to direct a licensee found to have committed a violation or violations of
22 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
23 enforcement of the case.

24 **CONTROLLED SUBSTANCES**

25 10. "Crack cocaine" is a material, compound, mixture, or preparation which contains the
26 controlled substance cocaine, is a stimulant that affects the central nervous system, and is a
27 Schedule I controlled substance pursuant to Health and Safety Code section 11054 (f).

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1 **FACTS**

2 11. On or about September 20, 2008, a Carlsbad Police Officer noticed Respondent
3 asleep behind the driver's wheel in a parked car. The officer awoke Respondent who stated she
4 was okay. The officer noticed that Respondent's eyes indicated she may be under the influence
5 of a controlled substance. Respondent admitted to the officer that she had smoked "crack," a
6 slang word for the illegal controlled substance crack cocaine, the previous night. During a
7 consensual search of the vehicle, the officer found a pipe commonly used to smoke cocaine,
8 which Respondent admitted she owned. Respondent was then arrested and transported to the
9 Carlsbad Police Department.

10 12. As a result of the arrest, on or about October 23, 2008, a complaint was filed in the
11 matter of *The People of the State of California v. Michelle L. Barclay*, in San Diego Superior
12 Court (North County Division), case number CN252531, charging Respondent with the violation
13 of Health and Safety Code section 11550 (a) (under the influence of a controlled substance) and
14 violation of Health and Safety Code section 11364 (unlawful possession of drug paraphernalia).

15 13. On or about November 13, 2008, Respondent entered a plea of guilty to violating
16 Health and Safety Code section 11550 (a) (under the influence of a controlled substance) and the
17 remaining criminal charge was dismissed.

18 14. On or about November 13, 2008, the court ordered that the entry of judgment against
19 Respondent be deferred pursuant to Penal Code section 1000 (PC 1000) which may result in the
20 dismissal of all criminal charges against Respondent upon her successful completion of the court-
21 ordered PC 1000 drug program. Respondent began participating in the PC 1000 program on or
22 about February 27, 2009. The court ordered Respondent to provide proof of completion at her
23 next scheduled court appearance on August 31, 2010.

24 **FIRST CAUSE FOR DISCIPLINE**

25 **(Unprofessional Conduct – Unlawful Use of Controlled Substances-Cocaine)**

26 15. Respondent is subject to disciplinary action under Code sections 2761 (a),
27 2762 (a) and 2762 (b) in that she used cocaine, an act constituting unprofessional conduct, and
28 was arrested for being under the influence of the controlled substance cocaine, on or about

1 September 20, 2008. Further, Respondent subsequently pled guilty to being under the influence
2 of cocaine on or about September 20, 2008, as described above in paragraphs 12 through 15
3 which are incorporated herein by reference.

4 PRAYER


5 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
6 and that following the hearing, the Board of Registered Nursing issue a decision:

7 1. Revoking or suspending Registered Nurse License Number 613717, issued to
8 Michelle L. Barclay.

9 2. Ordering Michelle L. Barclay to pay the Board of Registered Nursing the reasonable
10 costs of the investigation and enforcement of this case, pursuant to Business and Professions
11 Code section 125.3;

12 3. Taking such other and further action as deemed necessary and proper.

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14 DATED: 7/22/09


HEIDI J. GOODMAN
Assistant Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant